



United States Senate
WASHINGTON, DC 20510-0504

January 12, 2004

Commissioner Howard Beales
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Board of Governors of the Federal Reserve Board
20th and C Streets, NW
Washington, D.C. 20551

Dear Members of the Board and Commissioner Beales,

I write to express my strong concerns about a joint interim rule recently approved by the Board and the Commission that sets a single date of December 31, 2003 for the Federal preemption of State law under the Fair and Accurate Credit Transactions Act (FACT). Without clarification, this rule could be interpreted as prematurely preempting a California law requiring merchants to truncate credit card numbers on customer receipts as well as other important State laws targeting identity theft.

In order to remove this ambiguity, I strongly request that you clarify the final rule along the lines described in your letter of December 23, 2003 to Consumers Union, Consumer Federation of America, and U.S. PIRG.

Unless clarified, the rule could be interpreted to create a window of three to eleven months, and even longer for certain provisions which require regulations, where consumers will be deprived of State or Federal protections.

Congress touted the identity provisions of the FACT Act as an improvement for consumers. It cannot be consistent with this goal to create a gap in time where some state laws are displaced by federal requirements not yet in effect. For example,

- As of January 1, 2004, California law requires every electronically printed credit card receipt to have all but the last five digits of the

card number truncated. The Federal requirement **will** not begin to go into effect until January 1, 2005.

- Both California and Washington **give** identity theft victims an **existing** statutory right to receive information from certain **businesses** with whom the thief **has engaged** in transactions. Section 151, the comparable provision in FACT, doesn't go into effect until December 1, 2004.
- Similarly, Texas, California, and Louisiana have fraud **alerts** that could be partially nullified before Federal **fraud alert** provisions are put into effect on December 1, 2004.

For these reasons, I respectfully request that the interim final rule be modified for final issuance to plainly state what the Board and the Commission **stated** in the letter of Dec. 23, 2003 to consumer groups. Specifically, the letter states:

"... The joint rules are **based** on our opinion that **the specific protections afforded by the FCRA override state laws only when the referenced Federal provisions are in effect** ... [W]e believe that a requirement that **applies** under an existing state law will remain in effect until the applicable specific provision of the FCRA, **as** an amendment by the FACT Act, becomes effective. Consequently, **because** the substantive federal provisions **actually** will **become** effective at different times, from **six** months to three years after the **FACT** Act was enacted, establishing December 31, 2003, **as** the effective date for the preemption provisions **would allow the state law to continue in effect until the respective federal protections come into effect,**" (emphasis added).

Incorporating **the** above clarification into the final rule is necessary to remove any doubt about the ongoing validity of the State **laws** at issue.

Thank you for your consideration.

Sincerely,

